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OFFICE OF SECRETARY

April 12, 1996

VIA FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M. Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Preemption of Local Zoning Regulation of Satellite Earth Stations
IB Docket No. 95-59

Dear Mr. Caton:

This letter is written with respect to the FCC's Report and Order and Further Notice of Proposed Rulemaking released on March 11, 1996, regarding preemption of certain local regulation of satellite earth station antennas, which contains a proposal to prohibit enforcement of nongovernmental restrictions on such antennas that are less than one meter in diameter (the "FNPRM"). Consistent with your submission requirements, we have enclosed six (6) copies of this letter together with the original.

Compass Retail, Inc. is one of the largest shopping center management companies in the U.S. We lease, develop and manage a portfolio of forty regional malls and power centers throughout the country, totalling over 35 million square feet.

We are concerned that the proposed rule prohibiting enforcement of nongovernmental restrictions will adversely affect the conduct of our business without justification and needlessly raise additional legal issues. We question whether the commission has the authority to require us to allow the physical invasion of our property in this way. It is imperative that we retain the authority to control the use of our property, for several reasons.

The FNPRM incorrectly states that "nongovernmental restrictions would appear to be directed to aesthetic considerations." It is true that aesthetic considerations play a part, but they are certainly not the only concern. Nor are aesthetic considerations trivial, as the appearance of a building directly affects its value and marketability.

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More importantly, the indiscriminate placement of antennas on the exterior of our buildings may also create structural, maintenance and liability problems. The roof of an enclosed regional mall is the most sensitive portion of the entire complex. Extreme care must be undertaken to ensure proper drainage and weatherproofing, to avoid puddling and leaking. The roof generally covers such a large area that the tremendous weight of pooled water caused by improper drainage could cause structural stress - an imminent threat to public safety. Roof leaks not only cause inconvenience for the occupants of our centers (and landlord defaults under the tenants' leases), but other potential structural problems, as well (such as expansion upon freezing, corrosion of metal mounting elements, damage to interior improvements, and weakening of concrete through chemical reaction with substances carried in by the water). We manage several properties in South Florida and the Caribbean, areas prone to hurricanes. Without strict controls and careful monitoring, antennas could be installed in such a manner as to create serious wind-borne hazards in severe weather conditions.

It is incumbent upon us as shopping center managers to limit access to the roofs of our centers, which were not designed to handle the heavy traffic load that would result from multiple users having unimpeded access for installation, repair, maintenance and removal of antennas. The functionality and useful life of a roof system are severely impacted by roof traffic, as we have seen in connection with several of our recent construction projects. For these reasons, we negotiate strict conditions on the use of our roofs by any of our tenants. We use diligent efforts in documenting these roof-related transactions to allocate potential liability arising out of the installation and maintenance of the equipment (including antennas) or any damages caused by the equipment. Any infringement on our right to protect our properties and their owners in these circumstances will create new maintenance and repair costs that the shopping center owner will have to pay. Please also note that each and every roof penetration provides an exception to or violation of any existing roof warranty, exposing the mall owner to substantial, unanticipated costs.

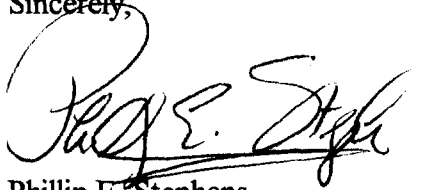
A major concern we have regarding roof access is the security of the shopping center and the resultant safety of its retailers and shoppers. We have seen many incidents of criminals gaining access to shopping center interiors through the roof. Sensitive HVAC, telephone and electrical equipment could be disabled, allowing criminals to do their work without opposition from traditional alarm systems. With increased roof access, we would be required to maintain credentials on so many people that potential problems could arise with the "wrong" individuals gaining access.

In many instances, we charge a fee and/or rental for use of our shopping center roof space for installation and operation of communications equipment. Any FCC action which prohibits us from restricting access to these areas may arguably constitute a governmental taking of our valuable private property rights.

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In conclusion, we urge the FCC to avoid interfering in our relationships with our mall occupants. All of the potential problems we cite will affect our bottom line and our property rights. Thank you for your attention to our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip E. Stephens", written over a horizontal line.

Phillip E. Stephens
Chairman & CEO

cc: Linda K. Schear, Esq. - General Counsel